

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**S.H., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Youngstown, OH, Employer**

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**Docket No. 17-0373  
Issued: April 12, 2017**

*Appearances:*

*Alan J. Shapiro, Esq., for the appellant<sup>1</sup>*

*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

CHRISTOPHER J. GODFREY, Chief Judge

COLLEEN DUFFY KIKO, Judge

ALEC J. KOROMILAS, Alternate Judge

**JURISDICTION**

On December 8, 2016 appellant, through counsel, filed a timely appeal from the November 10, 2016 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days elapsed from the last merit decision of June 18, 2015 to the filing of this appeal, pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of this claim.

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<sup>1</sup> In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; see also 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## **ISSUE**

The issue is whether OWCP properly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

## **FACTUAL HISTORY**

On December 9, 2013 appellant, then a 53-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on that day she injured her right middle finger when the rear door of the postal vehicle shut on her right hand. She stopped work on December 9, 2013. OWCP accepted the claim for closed fracture right metacarpal. It subsequently expanded the claim to include nonunion of right fracture. Wage-loss compensation and medical benefits were paid including a January 3, 2014 surgery for open reduction, debridement, and internal fixation of plates and screws of the right middle finger. OWCP also authorized a second surgery on March 21, 2014, which involved removal of hardware and right finger revision open reduction. Following a period of temporary total disability, appellant returned to full-duty work on September 30, 2014.

Appellant also has an accepted occupational disease claim for a right shoulder condition that arose on or about February 25, 1990.

On January 26, 2015 appellant filed a claim for a schedule award (Form CA-7). No evidence was received with her claim. On February 2, 2015 OWCP advised appellant of the deficiencies in her claim and providing her an opportunity to submit the evidence necessary to establish her claim. In response, it received duplicate copies of medical reports dated December 12, 2013, January 3, and July 14, 2014 from Dr. Adrian Butler, a Board-certified orthopedic surgeon.

By decision dated March 10, 2015, OWCP denied appellant's claim for a schedule award as she had failed to provide a permanent impairment rating from a qualified physician based on the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (2009).

In an April 6, 2015 letter appellant, through counsel, requested an oral hearing with a representative of OWCP's Branch of Hearings and Review.

In an April 17, 2015 report, Dr. Catherine Watkins Campbell, a family practitioner, provided results on examination and noted that appellant had reached maximum medical improvement (MMI) on November 19, 2014. She found 49 percent middle finger digit permanent impairment based on loss of range of motion (ROM) under Table 15-31, A.M.A., *Guides* 470 (6<sup>th</sup> ed. 2009). Dr. Watkins Campbell indicated that the digit impairment converted to nine percent right upper extremity impairment.

By decision dated October 9, 2015, the hearing representative conducted a preliminary review and determined that the case was not in posture for a hearing. She remanded the case to OWCP for further medical development.

As instructed by the hearing representative and in accordance with its procedures, OWCP forward a statement of accepted facts along with the case file, including Dr. Watkins Campbell's April 17, 2015 report, to its district medical adviser (DMA) for a schedule award impairment determination. In an October 19, 2015 report, the DMA, Dr. Morley Slutsky, Board-certified in occupational medicine indicated that appellant had reached MMI on February 16, 2015. He disagreed, in part, with Dr. Watkins Campbell's impairment findings and provided a detailed explanation for his disagreement. Citing to tables and figures in the A.M.A., *Guides*, the DMA concluded that appellant had a final adjusted right middle finger digit ROM impairment of 57 percent, as opposed to Dr. Watkins Campbell's 49 percent rating. The DMA's 57 percent right middle finger digit impairment converted to 10 percent right upper extremity impairment.

By decision dated December 2, 2015, OWCP denied the claim for an increased schedule award. It noted that appellant had already received schedule awards totaling 15 percent right upper extremity impairment under File No. xxxxxx664. As the current 10 percent rating was less than the total prior awards, OWCP found that she was not entitled to an additional award.<sup>3</sup>

On June 24, 2016 OWCP received counsel's May 18, 2016 request for reconsideration on appellant's behalf. Counsel submitted an April 17, 2015 report from Dr. Watkins Campbell, which he claimed had not been previously considered.

By decision dated November 10, 2016, OWCP denied counsel's request for reconsideration without a merit review. It found that his May 18, 2016 letter did not meet the requirements for a review under 20 C.F.R. § 10.606(b)(3).

### **LEGAL PRECEDENT**

Section 8128(a) of FECA does not entitle a claimant to review of an OWCP decision as a matter of right.<sup>4</sup> OWCP has discretionary authority in this regard and has imposed certain limitations in exercising its authority.<sup>5</sup> One such limitation is that the request for reconsideration must be received by OWCP within one year of the date of the decision for which review is sought.<sup>6</sup> A timely application for reconsideration, including all supporting documents, must set forth arguments and contain evidence that either: (1) shows that OWCP erroneously applied or

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<sup>3</sup> The December 2, 2015 decision referenced three prior schedule awards (December 27, 2007, May 15, 2012, and January 4, 2013) that appellant reportedly received with respect to her right shoulder condition under File No. xxxxxx664. However, the referenced decisions or the associated impairment ratings are not in the current case record. See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.5a (June 2011).

<sup>4</sup> This section provides in pertinent part: "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on [his/her] own motion or on application." 5 U.S.C. § 8128(a).

<sup>5</sup> 20 C.F.R. § 10.607.

<sup>6</sup> *Id.* at § 10.607(a). For merit decisions issued on or after August 29, 2011, a request for reconsideration must be "received" by OWCP within one year of the OWCP decision for which review is sought. *Supra* note 3 at Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (February 2016). Timeliness is determined by the document receipt date of the request for reconsideration as indicated by the "received date" in the Integrated Federal Employees' Compensation System (iFECS). *Id.* at Chapter 2.1602.4b.

interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.<sup>7</sup> When a timely application for reconsideration does not meet at least one of the above-noted requirements, OWCP will deny the request for reconsideration without reopening the case for a review on the merits.<sup>8</sup>

### ANALYSIS

The Board finds that OWCP properly denied appellant's request for reconsideration without further merit review.<sup>9</sup>

The Board first finds that OWCP properly considered counsel's request as a request for reconsideration and not as a claim for an increased schedule award. In his correspondence to OWCP, counsel specifically noted that he was requesting reconsideration of OWCP's December 2, 2015 decision,<sup>10</sup> and requested that the previous decision be overturned following review of the evidence of record. As counsel was contesting the prior decision, not seeking a new award based upon new impairment, the Board finds a proper reconsideration request.<sup>11</sup>

As noted above, the Board does not have jurisdiction over the merits of the December 2, 2015 decision. The issue presented on appeal is whether the request for reconsideration met any of the requirements of 20 C.F.R. § 10.606(b)(3), thereby warranting a review of the merits of the claim. In his May 18, 2016 correspondence, counsel did not show that OWCP erroneously applied or interpreted a specific point of law, or advance a new and relevant legal argument not previously considered. He resubmitted the April 17, 2015 impairment rating and claimed that OWCP had failed to consider it. To the contrary, OWCP had previously forwarded Dr. Watkins Campbell's April 17, 2015 report to its DMA for review, and OWCP specifically referenced his report in its December 2, 2015 decision. The medical adviser had reviewed Dr. Watkins Campbell's report and found that appellant was entitled to 10 percent right upper extremity permanent impairment rather than Dr. Watkins Campbell's 9 percent right upper extremity permanent impairment rating. Providing additional evidence that either repeats or duplicates information already in the record of evidence does not constitute a basis for reopening a claim.<sup>12</sup>

The Board finds that counsel failed to show that OWCP erroneously applied or interpreted a point of law, failed to advance a point of law or fact not previously considered by OWCP, and failed to submit relevant and pertinent new evidence not previously considered. Consequently, appellant has not met any of the regulatory requirements and OWCP properly

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<sup>7</sup> *Id.* at § 10.606(b)(3).

<sup>8</sup> *Id.* at § 10.608(a), (b).

<sup>9</sup> *See B.D.*, Docket No. 16-1177 (issued October 27, 2016).

<sup>10</sup> *See J.K.*, Docket No. 14-1082 (issued November 24, 2014).

<sup>11</sup> *See A.C.*, Docket 13-1810 (issued January 6, 2014); *supra* note 6 at Chapter 2.1602.3(b) (October 2011).

<sup>12</sup> *James W. Scott*, 55 ECAB 606, 608 n.4 (2004).

declined her request for reconsideration of the merits of her claim under 5 U.S.C. § 8128(a).<sup>13</sup> Thus, OWCP did not abuse its discretion in refusing to reopen her claim for a review on the merits.

Appellant may request a schedule award or increased schedule award based on evidence of a new exposure or medical evidence showing progression of an employment-related condition resulting in permanent impairment or increased impairment.

### **CONCLUSION**

The Board finds that OWCP properly denied appellant's request for merit review under 5 U.S.C. § 8128(a).

### **ORDER**

**IT IS HEREBY ORDERED THAT** the November 10, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 12, 2017  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>13</sup> *A.K.*, Docket No. 09-2032 (issued August 3, 2010); *M.E.*, 58 ECAB 694 (2007); *Susan A. Filkins*, 57 ECAB 630 (2006).